

THE
C A S E ¹⁵
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FAIRLY STATED:

OR, AN

I N Q U I R Y

HOW FAR THE

CLAUSE Lately Rejected

By the HONOURABLE

K. Ireland
HOUSE of COMMONS,

Would, if it had PASSED, have Affected
the LIBERTIES of the People
of IRELAND.

D U B L I N :

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СЕМЕЙСТВЕННЫЙ

САД

СЕРГЕЙ УЛЯНОВ

ОБРАЗОВАНИЯ

УЧЕБНОЕ

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АНОНОСЧЕСТВО

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TO THE
READER.

THE Author of the following Sheets
neither hath any Connections with the
Court, nor any particular Attachment
to those who are accounted the Leaders
of the Opposition. He hath a most sincere Es-
teem for the worthy Men on both Sides, and
heartily disapproves the odious Reflections cast
upon either, as well as that Heat and Bitterness
of Spirit which, wherever it appears, is enough
to disgrace the best Cause in the World. With-
out pretending to judge of the Views of others,
he is intimately conscious of his own, which is
to heal instead of widening our Breaches,
and to remove or lessen the Prejudices and Je-
alousies many honest Minds have entertained, as
if an Attempt had been made against our most
essential

essential Liberties. Suspicions of this kind, though far from being intended as a Reflection upon our gracious Sovereign, must needs tend to cast some Blemish upon his Government, from whichevery good Subject would be willing to have it cleared. He is sensible that some of the Matters here considered are of a high Nature, and require to be treated with great Modesty. Without pretending to absolute Certainty he has followed that which appeared to him the most probable; and hopes the Friends of Liberty will allow the same Freedom of thinking and judging to others, which they think is reasonable to take themselves.



T H E



C A S E

Fairly Stated, &c.



To is the Part of every Man that hath a true Zeal for his King and Country, to use his best Endeavours to serve the real Interests of both ; and there is not a more effectual way of doing this in the present Circumstances of Things, than the contributing, as far as in him lies, to remove or allay those Heats and Animosities, which have arisen to such an unusual Height among us. Many one that has observed the Addresses, which have been made

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in several Parts of this Kingdom, to those of their Representatives who opposed the Clause sent over by his Majesty with the Advice of his Privy Council in Great-Britain, can frame no other Notion, but that the People have been led to believe, that their fundamental Liberties were in Danger. Many of those Addresses manifestly proceed upon a Supposition, that the Intention of the Clause was to claim Powers inconsistent with the Constitution, and which tended to subvert our most essential Rights and Privileges. And accordingly some of them have gone so far as to thank their Representatives for having *preserved* them from *irretrievable Ruin*. And if this were really the Case, the Gentlemen who were in Opposition to the Court, certainly ought to be distinguished as eminent Patriots, and deserve all the Honour and Applause that their Country can bestow upon them. But if on the contrary it should appear, that the Opposition was carried too far, and that the rejected Clause, if it had passed, would not have made any Infringement upon our just Rights and Liberties, then, however good their Intentions may have been, it was not well considered to do what may have an Appearance of complimenting those Gentlemen at the King's Expence, who hath hitherto shewed the utmost Regard for the Liberties of his People, and a particular Affection for his good Subjects of *Ireland*. Or, if the Matter in Contest be a thing that is not very clear and certain, and about which Persons well-skilled in our Laws are not agreed, it is no wise thing for those who cannot reasonably be supposed to be very competent Judges in things of this Nature, to take upon them positively to determine the Point: Especially to determine it in such a way as is not very honourable to his Majesty, and seems to carry an Insinuation as if he were for assuming a Prerogative that

that doth not belong to him, and which is subversive of the Liberties of his People. Such Prejudices must in the Nature of things tend to diminish the Zeal and Affection of his Majesty's Subjects to his sacred Person and Government; which in the Issue must have the worst Influence on the Peace and Prosperity of this Country.

In these free Nations People are apt naturally to have a Pejudice in favour of the House of Commons, the Representatives which they themselves have chosen, and to take their Side of the Question, whenever they happen to be in Opposition to the Court. They are ready to take it for granted, that where what they call the Court and Country are in Competition, the Country are in the Right, and the Court in the Wrong. And no doubt this hath very frequently been the Case. But yet this is no certain Way of judging. A Man that judgeth calmly and impartially of Things, and who is acquainted with the Histories and Transactions either of former Ages, or of our own, must be sensible that large popular Assemblies, and even Parliaments, have been not seldom in the Wrong; not only when acting under the Influence of a Court, but when acting in Opposition to it. Especially, when, as it often happens in great Bodies, Competitions are set on foot, Parties and Interests are formed under the Influence of leading Men, and Passions and Jealousies entertained and fomented. Instances of which might be produced from some of the Proceedings of the House of Commons in *England* in the Reign of our late glorious Deliverer King *William*. My Intention in mentioning these Things is not to draw odious Parallels, but only to shew that we ought not to suffer our selves to be carried too far by a Prejudice which is apt to arise in the Minds of honest Men, and true Lovers of their

Country, in favour of a Determination of the Majority of a House of Commons. On the other hand, some Persons may be apt to be too much swayed by Prejudices in favour of the Prince ; especially when he is an excellent One, and hath always had a great Affection and Regard to the Liberties of his People, which is confessedly the Character of his present Majesty. But neither is this to be absolutely relied upon ; because even the best of Kings may be led aside by false Lights, and by the Insinuations of artful and interested Men, so as to form wrong Notions in some Instances both of his Subjects Rights, and of his own Prerogative.

The Design of all this is, that in the Question before us we should endeavour to free our Minds from such Prejudices, as hinder us from judging equally and impartially, and that we should not be too hasty and peremptory in our Determinations concerning it.

The whole Controversy is about a Clause which came over this last Session of Parliament from his Majesty and his Privy Council in *Great Britain*, to be inserted in the Preamble of the Act for discharging the Remainder of the National Debt. In that Preamble the Commons had declared, that " there was a considerable Balance remaining in the Hands of the Vice-Treasurers, or Receivers-General of this Kingdom, or their Deputy or Deputies." And then the Clause which was sent over from *Great Britain* was designed immediately to follow, and runs thus : " And your Majesty ever attentive to the Ease and Happiness of your faithful Subjects, has been graciously pleased to signify that you would consent, and to recommend it to us, that so much of the Money remaining in your Majesty's Treasury, as should be necessary, be applied to the Discharge of the National Debt,

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" or of such Part thereof as should be thought expedient by Parliament." It is proper to observe here, that his Grace the Duke of DORSET, our Lord Lieutenant, had in his Speech at the opening of the Session, declared to the Commons, that his Majesty had commanded him to acquaint them " that he would graciously consent, and recommended it to them, that so much of the Money remaining in his Treasury, as should be necessary, should be applied to the Discharge of the National Debt, or of such Part thereof, as they should think expedient." Whosoever will compare this Part of the Speech with the Clause above recited, will find that the latter has an evident Reference to the former. And that, as the Lord Lieutenant had declared in his Speech at the opening of the Session by the King's express Command, that his Majesty *would graciously consent, and recommended* to them the applying of the Money in the Treasury to the Discharge of the National Debt; so the Clause transmitted from *Great-Britain* was designed as an Acknowledgment, in the Name of the Commons, of his Majesty's Goodness and Attention to the Ease and Happiness of his Subjects, in recommending to them and previously signifying that he would consent to the Application of that Money towards the Discharge of the National Debt, or of such Part thereof as to them should seem expedient.

Such was the Clause on the Account of which the Act was rejected by the Majority of the House of Commons. And it must be supposed, that they would not on the Account of that Clause have rejected an Act of such Importance to the Publick, if they had not regarded this Clause, as having an ill Aspect on our Liberties, and as designed to invest his Majesty with unconstitutional Powers, prejudicial to the Rights and Privileges

vileges of Parliament. On the other side his Majesty with the Advice of his Privy Council in Great-Britain, hath in a very effectual Manner signified his Displeasure against that Proceeding of the House of Commons, as an unwarrantable Infringement of his Royal Prerogative.

It cannot but give great Concern to every true Lover of his Country, that there should be such Differences between his Majesty the best of Kings, and a House of Commons who have always approved their Loyalty, and shewn themselves remarkably well affected to his Majesty's Person and Government. I am sensible that great Numbers of the People have already declared in the most public Manner on the Side of the Commons. But in this they may perhaps have been too forward, and have determined the Question, without having the State of it fully before them. It is not impossible, that when they come more coolly to consider it, and are apprized where the true Point in difference lies, they may either see Cause to alter their Sentiments, or not judge it to be a Matter of such great Consequence to their Liberties, as they were at first made to apprehend. Matters of parliamentary Right on the one hand, and of Prerogative on the other, are in many Cases attended with great Difficulties, and with respect to which Persons eminent for their Knowledge of the Laws and Constitution may be of different Sentiments.

An Appeal has been made to the Public in this Cause, by several Writings that have been published on both Sides. The most remarkable Pamphlets in favour of the Clause, are, that which is intitled, " Considerations on the late Bill for Payment of the " Remainder of the national Debt, &c." and another intitled, " Some Observations relative to the " late Bill for paying off the Residue of the na-

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“ tional Debt of *Ireland*.” Among the Writers that have appeared on the other Side, those which best deserve our Notice are the “ Remarks on a late Pamphlet, intitled, “ Considerations on the late Bill for paying the national Debt,” which have been published in four Numbers, with a Supplement. And a Pamphlet said to have been written by an eminent Member of Parliament, intitled, “ The Proceeding of the Honourable House of Commons in *Ireland*, in rejecting the altered Money Bill on December 17th, 1753, vindicated.” And to this there have been two Answers returned. Without making myself a Party in the particular Debates carried on by these Writers against one another, I shall take the same Liberty they have done, of declaring my Sentiments, according to the Light in which things have appeared to me.

According to the Author of the *Considerations*, the true Question upon the Resolution of which the Propriety of receiving or rejecting the Clause depends, is this. “ Whether the Trust of applying “ the Money given by Parliament to the Crown, “ without any special Appropriation, and in the ac- “ tual Receipt of his Majesty’s Treasury, be by “ the Laws and Constitution of this Kingdom, ves- “ ted in the Crown for public Service.” This hath been cried out upon as a very unfair State of the Case. The Author of the *Remarks* represents this as an *insidious* Design to make the World believe, that the House of Commons of *Ireland* had refused to acknowlege, that the Trust of applying the Money given by Parliament to the Crown without any special Appropriation, was *vested in the Crown for public Service*. He says, that this was neither *the whole*, nor so much as any *the least Part*, of the Question in the House: And that in this *both Parties expressly profess to agree*. Rem. Numb. 3d. p. 10.

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The same Thing is in Effect owned by the Author of the *Proceeding of the House of Commons, Vindicated*; and who may be justly supposed to be well acquainted with the Sentiments and Intentions of the Majority of that Honourable House. For he tells us, speaking of the *Royal Trust in the Crown*, that with Regard to this, *both Sides agree in Principles*, p. 41. It is true, that the Author of a Letter in the *Universal Advertiser Extraordinary*, of Febr. 21. seems to deny this. After having mentioned the Assertion in the *Considerations*, That " the Trust " of applying the Money given by Parliament to " the Crown without any special Appropriation, is " by the Laws and Constitution of this Kingdom, " vested in the Crown for public Services." He adds, " I desire to know by what Law ? There is " no such express Law in the Books, nor can any " Construction that is not Nonsense of any Act " made and provided for general Purposes, import " such a Trust in the Crown, or any Thing like " it." I shall not take Pains to prove a Point which is acknowledg'd by the ablest Writers on both Sides. But lest this Gentleman's positive and dogmatical Way of pronouncing may have an Effect upon some Readers, I think it may be sufficient to observe, That such a Trust is implied in the very Nature of such a limited Monarchy as ours : And that according to the constant Language of all our Acts of Parliament, the Money is granted to the Crown : And if it be granted to the Crown, it must either be granted absolutely, or, in Trust for public Services. The former will not be pretended, and therefore the latter must be acknowledg'd. And indeed whosoever considers the Acts of Parliament relating to the public Revenue, will find that in Cases where there is no special Appropriation, the Money is granted in general Terms to the Crown, for

for defraying public Charges in the Defence and Preservation of the Realm, as it is expressed in the Preamble of the Act of Excise, for Increase and Augmentation of his Majesty's Revenue, as it is in the Act for Tunnage and Poundage, or, for the Support of his Majesty's Government, which is the professed Design of the additional Duties. This plainly supposeth a Trust or Power vested in the Crown, for applying the Money to such Uses and Services as his Majesty shall judge to be for the Defence and Preservation of the Realm, or for Increase and Augmentation of his Majesty's Revenue, or proper for the Support of his Government.

And supposing such a public Trust of applying the Money given by Parliament to the Crown, without any special Appropriation, to be eminently vested in his Majesty, it seems to be very proper and reasonable, that his Consent should be had and signified previously to the Application of that Money, to a particular Service. It is true, that if the Trust be abused, the Parliament hath a Power, by the Constitution to inquire into, and rectify that Abuse. But no Abuse of that Trust is alleged or pretended in the present Case, and therefore, the Trust remaineth in its full Force, and consequently, there is no just Pretence for controuling that Trust, or with-holding that Respect and Regard which is due to the Right and Dignity of the Royal Trustee.

The several parts of our Constitution, are most wisely ballanced. King, Lords, and Commons must all concur to make a Law that shall be binding on the Community. But the several Branches of the Legislature, have their special Rights and Privileges. To the King properly belongeth the executive Power. The Parliament is not always sitting, but his Majesty is always at the Head of Government. And that Part of the public Money,

which is not appropriated, and which remaineth in the Treasury, is in a particular Manner under his Direction, to be by him applied as the Services and Exigencies of the Government require. And according to our Constitution in this Kingdom, he hath a Right by Letters under his Sign Manual, to order the Application of that Money, by his own Authority to such Uses as to him seem most expedient for the Support of his Government, and the Service of the Community. He is therefore in a peculiar Manner, intrusted with the Application of the public Money to particular Uses and Services. * And therefore, when any particular important Application of it is proposed in Parliament, there ought to be a special Regard had to his Approbation and Consent. And as our Constitution is Monarchical, there should be particular Care taken, that it be done in such a Way, as is well fitted to preserve and maintain the Majesty and Prerogative of the Crown, provided it doth not intrench upon the Rights of the other Branches of the Legislature, and the Liberties of the People.

The Author of the *Remarks*, who seems to have considered this Matter with some Exactness, acknowledges and asserts, that " with Regard to the Application of the public Money the King has a

* The House of Commons of *Ireland* in an Address to Queen *Anne*, June 15th, 1710. in which they request, that the Arms and Stores not already contracted for in *Great Britain*, might be made and provided in this Kingdom, express themselves thus, " Since the Care so peculiar to your Majesty, of providing at all Times with Speed as well as Efficacy for the Security of your People, has made it necessary, that some Part of the Arms should be forthwith made in *Great Britain*, &c." Where they plainly declare, the Care of providing at all Times with speed as well as efficacy for the Security of the People to belong in a peculiar Manner to the Crown. See Journals of the House of Commons, Vol. III. p. 758.

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“ salutary constitutional Right to judge of the Occasion, the Time, and the Sum, not merely in Conjunction with the other Branches of the Legislature, but likewise separately, especially in the interval of Parliament.” And he thinks the Argument brought in Proof of this by the Author of *the Considerations* is valid. Rem. Numb. 2d. p. 9. Where he seemeth plainly to allow that the King hath a Right, even when the Parliament is Sitting, but especially in the Interval of Parliament, to apply the unappropriated Money remaining in the Treasury, at such Times, and on such Occasions, and in such Services, as he shall judge properst for the public Good; and this *separately from the other Branches of the Legislature*, i. e. without taking their Advice or Authority with him, as to such Application, or if they give their Advice relating to it, he is not obliged to follow their Advice, according to this Gentleman’s Account of the Matter. For he talks of the King’s having not only “ a parliamentary Right common to the Constitution of Great Britain and Ireland, of refusing his Royal Assent to a Bill prepared in Parliament, concerning the Application, but also his constitutional Right peculiar to this Country, a Right of applying this redundant Money in such a Manner as he shall judge most conducive to the Ease of the People, and Exigencies of Government in this Kingdom, after having disapproved of the Application proposed by the Commons.” Rem. Numb. 3d. p. 5. This he repeats again, ibid. p. 12. where he speaks of the “ constitutional Right, of which the King is at present possessed in regard to this Country, of going on, after he has refused his Assent, to make such Applications of the Money, as he shall judge most for the public Service.” Only with this Limitation, which he had also mentioned before

fore, that his Majesty's Servants must be answerable in Parliament, for the Manner and Nature of such Applications.

This ingenious Writer is the only one of that Side, that I have seen, who takes particular Notice of the peculiar Constitution of this Kingdom, though it certainly ought to be considered in order to a right Determination of the Question before us.

According to this Account, which appears to me to be a very fair one, I think it may be proceeded upon as an acknowledg'd Principle, That the Trust of applying the Money granted by the Parliament to the Crown, without any special Appropriation, is by the Constitution of this Kingdom, vested in the Crown for public Services; that his Majesty has a Right to judge of the Occasion, Time, and Sum; and this not only in Conjunction with the other Branches of the Legislature, but separately from them.

This View of the Case may help us to form a distinct Notion of the present Debate. It relates to a Bill brought into the House of Commons, in which it is expressly declared, that there is a considerable Sum of Money remaining unappropriated in the Treasury, and at the same Time, it is enacted that that Money should be applied to a particular public Service. The Question therefore is, whether in such a Case, it is fit and proper, that his Majesty, who has by the Constitution, a Power of applying that Money to such public Uses as he judges fitteſt, should previously recommend, and signify that he would consent to that Application? And whether if he has thus previously declared to the House of Commons, that he would consent to it, it is proper for them in forming a Bill concerning that Application, to acknowlege this his previous Consent?

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The Honourable House of Commons by rejecting the Clause in the Manner they did, seem plainly to have designed to determine, either that his Majesty ought not previously to have signified that he would consent to the applying the Money in the Treasury, to that particular Use of paying the National Debt, or to any Use whatsoever ; or, that if he did previously declare it, the Parliament ought not to make an Acknowledgement of his having thus previously declared that he would consent : And that the making such an Acknowledgement, would be a Breach of their essential Rights, and a betraying the Constitution. The Author of the Remarks goes so far as to say, that " they were necessarily obliged by that inviolable Fidelity and Respect which " every Man owes to the Constitutional Rights of " this Country, resolutely to with-hold all such Acknowledgements. Rem. Numb. 3d. p. 5. And again p. 11. that " they could not make those Acknowledgements, without totally giving up their most essential salutary and constitutional Rights."

It will be readily acknowledg'd ; that if the King had no Right by the Constitution of applying the unappropriated Money in the Treasury, to any particular Service, without a parliamentary Allowance, or if he had no Right to make such Application, but in Conjunction with the Parliament, then there would be no Propriety or Justness in his previously signifying that he would consent to such Application ; nor could the Parliament be under any Obligation to take Notice of such previous Consent. But when it is admitted, that by Virtue of the Trust vested in him by the Constitution of this Kingdom, his Majesty hath a Power or Right of applying that Money by his own Authority, to such Uses as in his Great Wisdom, he shall think most convenient for the public Service. On this View of the Case, there

appears

appears to be a great Propriety in his recommending to the Commons, and previously signifying, that he would consent to a particular Application of it, before the Commons form a Bill concerning that Application. For if the separate Power of applying the unappropriated Money in the Treasury be a Branch of his Majesty's Prerogative according to the Constitution of this Kingdom, then it is agreeable to his Wisdom to take Care that the Application of it, be ordered in such a Way as is best fitted to maintain that Right. And his Majesty's recommending that Application to the Parliament, and signifying, that he would consent to it, previously to their making an Act concerning it, seems very properly fitted to support that part of his Prerogative. And to reject an Act of great publick Utility, because in the Preamble to that Act there was a Clause signifying their Acknowledgement of his having previously declared that he would consent, seem to be in Effect a disclaiming that part of his Majesty's Prerogative, which relates to his separate Power of Application. For how could his recommending, and declaring that he would consent to such Application, and their Acknowledgement of this his previous Consent be improper, when it is allowed that he hath a Right by the Constitution to apply it separately from the other Branches of the Legislature ?

It is, as was before hinted, part of our Constitution in this Kingdom, that the King's Letters, when issued in due Form, are sufficient Warrants in Law for the Payment of Money out of the Treasury, for such Uses and Services as his Majesty shall think fit to appoint. And that he is not obliged in that Case previously to consult the Parliament, but can direct and determine the Application by his own Authority. It is urged indeed, that the Payments by

by the King's Letters are afterwards laid before the Parliament and passed in the Publick Accounts, and therefore are subject to a Parliamentary Inquiry. But this is far from being an Argument against the Authority of those Letters. On the contrary, since the Payments on these Letters are constantly brought into Parliament, and yet the Authority of these Letters has never been questioned in the House of Commons, this affordeth a strong Argument to prove, that in the Judgment of that Honourable House, His Majesty hath a Right, by virtue of the constitutional Trust vested in him to apply the Money in the Treasury to such Uses for the Service of the Publick, as to him seem proper; and that this is part of his legal Prerogative: though if this, or any other part of the Prerogative should in any Instance be abused, they have a Right of inquiring into that Abuse. I have heard it admitted by Gentlemen who are most zealous against the Clause, that his Majesty might, according to our Constitution, have ordered by his Letters the payment of so much of the Publick Money out of the Treasury, as he should judge necessary towards the discharging the National Debt. It will be easily acknowledged, that it was becoming his Majesty's Wisdom, and agreeable to the Harmony which ought always to be maintained between the King and Parliament, that an Application of the Publick Money of such Importance should be the united Act of the whole Legislature, and not done by the King's sole Authority. And accordingly his Majesty wisely chose that it should be so, and therefore recommended it to the Parliament, and previously signified that he would consent to that Application. And considered in this View, that against which so loud a Clamour hath been raised, as if it were a subverting our fundamental Liberties, turns out

out to have been really a signal Instance of great Goodness as well as Wisdom in his Majesty, and of his tender Regard to the Honour of Parliament, and to the Liberties of his People, and of his Unwillingness to act by mere Prerogative, even where he had a Right to do so. This one would have thought might have been thankfully acknowledged. But the Bill containing those Acknowledgements has been rejected. Yet this hath not prevailed with his Majesty to lay aside his gracious Intentions. As he is sensible of its being highly for the publick Service, that the National Debt should be discharged, he hath been pleased, since the Prorogation of the Parliament, to order the Payment of it out of the Treasury by his Royal Letters according to the constitutional Trust vested in him, and thereby hath given a manifest Proof of his readiness to apply the Money in the Treasury for the real Service of the Publick, and for the Ease and Happiness of his Subjects.

The Sum of the Argument hitherto carried on is this. It is not denied by the ablest of those who have appeared against the Clause, that it is a part of the King's Prerogative, vested in him by our Constitution, to apply the Money, not specially appropriated, remaining in the Treasury, to such Uses as he in his great Wisdom shall think fittest for the publick Service: That he hath this Trust not merely in Conjunction with the other Branches of the Legislature, but separately from them, so as to have a constitutional Right of applying that Money by his single Authority, as he shall think most expedient for the Use of the Publick, though if this Power be abused, his Servants are accountable for that Abuse. And considering this his Right, there is a Propriety in it, that when the Parliament makes an Act for applying part of the Money remaining

maining in the Treasury, the Trust of applying which is eminently vested in his Majesty, he should previously in some way or other recommend it to them, and signify his Consent to such Application. And since his thus previously signifying his Consent is designed to assert this his Prerogative, to reject a Bill because it contained an Acknowledgement of his Majesty's having previously signified that he would consent, might look like an Incroachment upon that Prerogative: For would not this be equivalent to a Declaration, that he ought not in any Case of applying the publick unappropriated Money, previously to signify his Consent? and might it not be inferr'd from his not being allowed ever previously to declare his Consent in such a Case, that he had not a constitutional Right of applying it separately from the other Branches of the Legislature, nor could determine it to any particular Use or Service without a special Parliamentary Allowance for that Purpose? And would not this have an Appearance of altering our present Constitution in this Point, and infringing upon the Royal Prerogative? And surely his Majesty may be allowed to be careful of maintaining his Prerogative, as well as the Commons are of their Privileges.

From the View which hath been given it appeareth, that the so much contested Clause was well fitted to maintain his Majesty's legal Prerogative. And this certainly was a very good Reason for his insisting upon it, and would be so for the Commons accepting it, provided there was nothing in it contrary to the just Privileges of the Parliament, and the Liberties of the People. For I believe it will be owned, that the Parliament ought not to be wanting in any Respect to his Majesty, which is consistent with the Constitution. This therefore is what comes next to be inquired into.

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That which seems to have created the chief Prejudice against the Clause in the Minds of the People is an Apprehension, that it tended to give the King such an absolute Power over the Money in the Treasury, that without his previous Consent the Parliament would not be allowed so much as to give his Majesty any Advice relating to the Application of it, much less deliberate about forming a Bill concerning it. And that though it should appear to them to have been manifestly embezzled, and applied in a manner even prejudicial to the Publick, they could not without the King's express Allowance and Consent enter upon any Enquiry with regard to it. And that this would be a great Infringement of our Liberties, and of the most valuable Rights of Parliament.

This is the Strength of what hath been urged against the Clause; especially by the Author of the *Remarks on the Considerations*. And this seems to be the true Cause of that Zeal which he hath every where expressed against it. It is on this Foundation that he represents it as striking at the *very Root of our Liberties*; and as tending to *make void the everlasting most righteous Title of the Community to a valid Security for their essential Rights and Liberties*. And he talks of an *infinite deal of Mischief*, which *imminently threatned this Country*, and which was *carried off* by rejecting the Clause. But this Gentleman, and the other Writers that have appeared on that Side, seem to me to have very much neglected that which is the principal Thing they ought to have proved, and that is, that the bad Construction they would put upon it, is the real Intention and Design of the Clause itself. This therefore is what I shall distinctly examine, since it is upon this that the whole Force of the Objections against the Clause, and the Arguments for rejecting it manifestly depend.

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To assist us in this Enquiry, I shall lay down two Principles which cannot be reasonably contested. The first is, that in judging of the true Sense and Intention of the Clause we are to judge by the Words and Expressions of the Clause itself. This indeed is the only proper Way we have of forming a consistent Judgment concerning the Sense and Meaning of any Law. Whatever may be supposed to have been the Design of those who have brought in a Law which is often hard to know, yet the real Sense and Force of it, and what it is that it obligeth us to, must be judged by the Expressions. If therefore any Persons who have appeared either for or against the Clause, have placed it in a wrong Light, or put a Construction upon it, which the Words do not naturally lead to, this ought not to be turned to its Prejudice. We without Doors, and, I will presume to say, the House of Commons themselves, have no sure Way of judging of the Import and Design of the Clause, and whether it ought to be approved or rejected, but by considering the Clause itself according to the usual Force and Meaning of Words. The other Principle is, that if the House of Commons had thought fit to pass that Clause, no Sense or Construction that might be afterwards put upon it, or Inference that might be drawn from it, could have bound the Parliament, which was not clearly contained in the Words of the Clause itself. For, as the Author of the Remarks justly observes, " the Rights of Parliament are not capable of being affected by Implication, or taken away but by clear Words in an Act of Parliament, or express Concessions from the Representatives of the People."

Let us apply these Principles to the present Case, that we may be able to form a Judgment whether the Clause would have been so dangerous to our

Liberties, as hath been represented. If we carefully examine the Words of the Clause, we shall find that it contains a Recital or Narrative, in which it is acknowledg'd to be an Instance of his Majesty's Goodness and Attention to the Ease and Happiness of his Subjects, that he had been graciously pleased to signify that he would consent, and had recommended it to the Commons, that so much of the Money remaining in the Treasury, as should be necessary, should be applied to the Discharge of the National Debt, or of such Part thereof, as should be thought expedient by Parliament. It is to be observed, that in this Recital contained in the Clause, it is not said, that his Majesty had declared that he did consent, but that he *would consent*. And the same Form of Expression is used in the Declaration made in his Majesty's Name in the Lord Lieutenant's Speech from the Throne at the opening of the Session; as also in the Speech from the Throne in the former Session of 1751. So that it appears that this manner of Expression was chosen as the most proper and unexceptionable. And therefore whenever *the previous Consent* is mentioned in this Argument, it is properly to be understood of a previous Declaration on the part of his Majesty that he would consent, *i. e.* when it should be regularly laid before him by Parliament. This seems naturally to imply, both that his Majesty designed to shew that this particular Application of the publick Money was what he highly approved, and that in a Case of this Nature and Importance, it was most proper and becoming his just Dignity and Prerogative, that he should recommend it to the Parliament, and signify that he would Consent, previously to their forming a Bill concerning it. But the Question is, whether it be here farther signified, that his Majesty's Recommendation and previous Consent, is so indispensably necessary, as absolutely to preclude the Parliament

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from ever giving Advice with Regard to the Application of the publick Money remaining in the Treasury, or from making an Inquiry concerning any Application that should be made of it, without leave from the Crown for doing so. This is the Sense in which many that oppose the Clause seem willing to take it. But how is it proved, that this is the Sense and Intention of the Clause? It cannot be pretended, that this is asserted in express Words. It must therefore be by Implication.

But how does this Implication appear? No otherwise than thus. That in the narrative Part of the Preamble, Notice is taken of his Majesty's having declared that he would consent, and of his having recommended to the Parliament, the Application of some Part of that Money to the Discharge of the National Debt, or of such Part thereof, as they should think expedient. And then the enacting Part of the Bill follows. But this is no Proof at all. I might appeal to common Sense and Language, whether the House of Commons might not very consistently acknowledge his Majesty's Goodness, in recommending and signifying his Consent in this Instance, without supposing that this bound them never to give their Advice to his Majesty on any future Occasion, as to any particular Application of the public Money, which to them should seem necessary for the public Good, except he should have signified his Consent beforehand? I am persuaded, that if the Clause had passed now, as it did in a former Session, neither this, nor any future House of Commons, would have acknowledged this to be a just Inference from it. As it is great Goodness in his Majesty, of his own Motion, to recommend to the Parliament, such an Application of the Money in the Treasury as is manifestly for the public Good, and to testify that he would consent to

to it, so if there should be an Application of that Money, which the Parliament judge to be greatly for the Advantage of the Public, and which hath not been previously mentioned to them by his Majesty, there is nothing in this Clause to preclude them from offering their Advice concerning such Application, when they judge it is necessary for the public Good to do so. Much less would they be precluded by it from ever inquiring into, or censuring any Misapplication or Embezzlement of that public Money, on any future Occasion. It is a Thing well known, that in Points of acknowledg'd Prerogative the Parliament may interpose where Prerogative is greatly abused, so as to check and restrain that Abuse, without questioning much less vacating that Prerogative it self. And in like Manner, supposing the Right of Application of the Public unappropriated Money in the Treasury to particular Uses and Services, to be constitutionally vested in his Majesty, so that his signifying his Consent is very proper, previously to the Parliament's forming a Bill concerning such particular Application, yet if this Right were in any Instances greatly abused, and there was a manifest Embezzlement and Misapplication of the public Money, such Abuse would according to our Constitution be a proper Subject for parliamentary Enquiry. And the Commons would have a Right to punish his Majesty's Servants, who had a Hand in such Misapplication and Embezzlement. And it would be an unreasonable stretching of the Clause, and putting a forced Construction upon it, to suppose, that the Intention of it was to signify, that in no Case, and on no Occasion whatsoever, should the Parliament ever be allowed to give their Advice, with respect to the Application of the Money remaining in the Treasury, or to make any Inquiry concerning it, or censure a Misapplication

application of it, except they were previously directed by the Crown to do so. I cannot see any thing in the Expressions themselves, which can determine them to this Sense. And as there is no proper Way of judging of the Intention of the Clause, but from the Words of the Clause, if the Words do not clearly import this, no pretended Implication or Inference attempted to be drawn from them could be conclusive in any future Time, to the Prejudice of that fundamental Right, which the Parliament hath to deliberate upon what is necessary for the public Good, and to enquire into and censure Misapplications and Abuses, even when those Abuses are attempted to be sheltered under Prerogative itself.

Upon this View of the Case, whosoever impartially considers the Clause, will find that all that can be fairly concluded from it is this: That when there is a public parliamentary Declaration made of a large Sum of Money remaining unappropriated in the Treasury, and the Design is to apply it to some particular Service, there is a great Fitness and Propriety in it, that his Majesty who hath a Right by our Constitution to apply that Money to such public Uses as to him seem most requisite, should previously to such an Application's being enacted by Parliament, signify his Consent to that Application: That this is the most orderly way of Proceeding in such a Case, and the most proper for maintaining his Majesty's just Right and Prerogative, and the Dignity of the Crown. This seems to be the true Intention of the Clause, and was a good Reason for his Majesty and his Council's inserting it in *Great Britain*, according to the Power they have by the Constitution to do so, when it had been omitted here; especially when they had great Reason to think, that it was on Purpose omitted here upon this

this Principle, that his Majesty ought not to have previously signified his Consent, nor the Commons to acknowledge it. And therefore in *a Case of this Nature and Importance*, it was judged necessary to insert the Clause on the other Side, and to transmit it hither, in *Assertion of his Majesty's Prerogative and Dignity*, and for *preserving the Regularity of the Proceedings in his Parliament of Ireland*: As it is expressed in the Letter written in his Majesty's Name, and by his Command, by the Privy Council in *Great Britain*, to the Lord Lieutenant and Privy Council in this Kingdom.

After all, it may perhaps be a very difficult Matter, and not very becoming a private Person to pretend positively to determine the Question, as it relates to the Rights of the Royal Prerogative on the one Hand, and the Privileges of the Parliament on the other. But it is more easy to judge, whether this be a Point in which the People's fundamental Liberties are concerned ; and whether there is Reason to think, that the Clause if it had passed, would have proved destructive of our most essential Rights ; which is the View in which vast Numbers of the People in this Kingdom have been led to regard it. It has been always looked upon as a most important Priviledge, that Taxes cannot be laid upon us, nor Money raised without our own Consent. And it is the Wisdom of Parliament to take Care that no farther Taxes be ordinarily raised upon the People, than the Exigencies of the Public, and the supporting the Majesty and Dignity of the Government may require. It is also acknowledg'd, that it is in their Power, at the Time of granting additional Taxes or Duties to appropriate certain Parts of them to such Uses as to them seem needful. And they have it farther in their Power to advise his Majesty as his Great Council with Regard to any

any Application of the public Money, which they think necessary for the public Good, and to call his Servants to an Account for such Embezzlements and Misapplications of it, as would be a manifest Breach of the public Trust. There is nothing in this Clause that tendeth to destroy any of those Powers and Privileges, and while these continue untouched, the People's Liberties are safe. As to the Power vested in his Majesty, it is acknowledged on all Hands, that he cannot raise Money upon the People, or lay Taxes upon them by his own single Authority; nor hath he a Power of applying the Money, that is raised by Parliament, and by them appropriated for any particular Service, to any other Use than that to which it is appropriated. But with Regard to the public Money that is unappropriated, and remaining in the Treasury, he hath a Right by our present Constitution, and by Virtue of the Trust vested in him, to apply that Money to such particular Uses as appear to him to be suited to the Exigencies of Government. And this he can do without an Act of Parliament determining that particular Application. The Question therefore is, whether supposing there is an Act of Parliament to be made relating to such a particular Application of that Money, it be not most fit and proper, for his Majesty to recommend that Application, and to signify, that he would consent to it, previously to it's being enacted by Parliament; when by the Power vested in him by the Constitution of this Kingdom, he might have so applied it without it's being enacted by Parliament at all? If this State of the Case were fairly laid before the People, they would easily see, that in which way soever this Question is determined between the Crown, and the House of Commons, each of whom claim to be proper Judges of their respective Rights, it is not a Matter in which our essential Liberties are concerned.

The utmost that can be alleged with any shew of Reason is this : That if the Clause had passed with an Acknowledgement of his Majesty previous Consent, this might be urged as a Precedent, to preclude the Commons on any future Occasion, from bringing in a Bill relating to the Application of redundant Money in the Treasury, without the King's previous Consent. In answer to this, it might be urged, that there have been Precedents in the Proceedings of the House of Commons in this Kingdom, and some of them several Times repeated, which have been afterwards in particular Instances deviated from, when the Circumstances of the Case and the public Good, to which all Forms must submit, seems to require it. If it be said, that the counteracting this Precedent on a future Occasion, if the Commons should attempt it, might produce great Inconveniences by creating a Resentment and Opposition in the Crown, the same Argument would have held against the rejecting the Clause. But to give the Objection it's full Scope, admitting the Supposition, that in the Case here referred to, and which has very seldom happened, *viz.* of a parliamentary Appropriation of a Redundancy in the Treasury, the King's previous Consent is regularly requisite, let us inquire into the Prejudice that might arise to the Public from it. If there should be in any future Time such an Application of that Redundancy proposed to the Parliament by the Crown as is evidently for the public Good, and that is the only Case that properly answers to the Precedent before us, then no hurt could happen to the Community from the King's previously declaring his Consent, and the Commons acknowledging it ; and in that Case the Parliament would conjunctly with the King enact the Application, and their Authority would be joined with his in making it a Law. Or, if

if we suppose, that there should be a particular Application of the redundant Money in the Treasury of great Utility and Importance to the Public, which yet has been neglected by the Crown, the Commons would have a Right to point it out to his Majesty by a Representation or Address ; of which Manner of Application to the Crown there are many Instances in the Journals of that Honourable House. And to such Addresses and Representations of the Great Council of the Nation, the Crown has generally shewn great Regard, and undoubtedly will do so, whilst there is a good Harmony maintained between them ; and in Case of their Disagreement, though the Commons should bring in Heads of a Bill relating to that Application, the Crown might refuse to assent to it. Or, if we put another Supposition, *viz.* of the King's recommending a particular Application of that Money to the Commons which they should judge to be a Wrong one and prejudicial to the Public, he would by proposing it to be enacted by Parliament, put it in their Power to reject it, and though he had previously declared his Consent, they might refuse theirs : Or, if he should either reject a good and necessary Application of that Money, or make a bad one without bringing it into Parliament at all, they would have a Right to make Inquiry into such a wrong Application, and call his Servants to an Account for it, and as the Author of the Considerations expresses it, to *with-hold future Grants in Proportion to such Misapplication.* And whilst this Power continues, it is a Check and Remedy against such Abuses. Or, if we suppose that the Parliament were itself corrupted, and ready to join with the Prince in making a Spoil of the People, whether the Clause passed or not, our Case would be unhappy.

The several Considerations that have been hitherto offered, may perhaps tend to remove or lessen the Prejudices many have entertained against the Clause, which was sent over by his Majesty with the Advice of his Privy Council in *Great Britain*. I say, by his Majesty: For to suppose as some have insinuated, that he was such a Stranger to the Transactions of his Parliament, or of his Privy Council, as not to know that such a Clause was sent over hither in his Name, or what it was, would be in my Opinion to cast a great Reflection on his Majesty's Wisdom, and Attention to the Affairs of his Government. And if he knew it, we have great Reason to conclude, that the Light in which he regarded it, was that of its being proper, and becoming his own Dignity and Prerogative, and at the same Time no way injurious to the Liberties of his People. And this is what we have endeavoured to shew. To which it may be added, that the Clause is expressed in a Manner, which shews the great Regard his Majesty hath to his Parliament: Since this Application of the Money in the Treasury to which his Majesty had previously declared that he would consent, is according to the Clause so far only to take place, *as should be thought expedient by Parliament*.

I have hitherto taken no Notice of that which hath raised the loudest Clamours among the Bulk of the People, and without which they would have thought themselves little concerned in the Contest between the Crown and the House of Commons: And that is an Apprehension, that his Majesty intended to take away the Money remaining in the Treasury out of the Kingdom; that the Clause invested him with Power to do so; and that the rejecting that Clause hath prevented it: On which Account, they think they cannot sufficiently express their Obligations to those Gentlemen who opposed it.

it. But, the Truth is, that the Clause hath nothing to do with this Matter at all. His Majesty, if the Clause had passed, would not have acquired any new Power over the Money in the Treasury which he had not before. And now that the Clause is rejected, he hath the same discretionary Power of applying the Money for publick Services, as he shall think fit, which he is by the Constitution confessedly invested with. And we have great Reason from his Majesty's known Wisdom and Goodness to be persuaded, that he will not order or dispose of it in any Manner which shall prove prejudicial to the Kingdom. This very Clause which hath been so much exclaim'd against, is a great Proof of the Goodness of his Intentions. And it is very odd, that Occasion should be taken to suspect his Majesty of a Design to carry away the Money now remaining in the Treasury out of the Kingdom, from his having previously declared to his Parliament, that he would consent to the Application of a considerable Sum out of the Treasury for the Discharge of the National Debt, which is a Service of high Importance to this Kingdom. And though the Bill designed for this Purpose hath been dropped, his Majesty hath taken Care (as was before observed) to effect his Design, by issuing out his Royal Letters for ordering the Payment of that Debt.

It will be readily owned, that the discretionary Power vested in his Majesty of applying the unappropriated Money lying in the Treasury to such publick Services, and on such Occasions as he shall judge proper, may be abused. But no Inconveniences that might arise from an Abuse of that Power or Right, ought to be admitted to set aside the Power or Right itself. If any Man should take it into his Head to propose, that to prevent the Abuses of the discretionary Power of Application vested

vested in the Crown, the Parliament should always join in directing the particular Application; and that for this Purpose in the Intervals of Parliament there should be a Committee of Parliament always sitting; it is not improbable that some Persons in their Zeal for Liberty might look upon this to be an Improvement of our Constitution: But in reality it would quite alter it by turning our Monarchy into an Aristocracy. It would in effect take the executive Power out of the Hands of the Crown, and, by depriving it in a great Measure of its Power and Dignity, would throw too much Power into the opposite Scale, and destroy that Ballance on which our Glory and Safety depends. And as I verily believe such a limited Monarchy as ours to be a Constitution better fitted to promote the true general Happiness and Liberty of the People than any other Monarchy or Republick now in the World, I think every true Lover of his Country ought to oppose whatsoever tendeth to make a material Alteration in it.

That I might not interrupt the Course of the Reasoning, I have as yet said nothing to the Argument from Precedents. The Gentlemen in Opposition to the Clause seem to value themselves mightily upon the Number and Force of the Precedents they produce. They talk of a *long Induction of Facts and Precedents from the Reign of K. Charles II. to the Year 1751, for near a Century of Years*; and represent the Rights of the Commons as confirmed by the *unquestionable Authority of Acts of Parliament, and Precedents almost innumerable*. Rem. Num. IV. p. 41, 42, 48. That we may therefore judge how far the Argument from Precedents will answer the Design of these Gentlemen, let us inquire of what kind these Precedents are, and what it is that they are brought to prove.

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The Proceeding to be vindicated by Precedents is the rejecting an Act relating to an Application of the Money in the Treasury confessedly of great Utility and Advantage to the Publick, because it contained a Clause acknowleging his Majesty's having previously signified that he would consent to that Application. This is manifestly the true Point in Question. And in this View let us consider and try the Precedents that are produced.

Many of these Precedents are designed to shew, that the Commons have a Right without any previous Consent from the Crown, to point out such particular Applications of the publick Money as they judge to be for the publick Service. But these do not properly come up to the Point. They that are for the Clause may very consistently acknowlege, that when the Parliament judge that any particular Application of the publick Money lying in the Treasury would be of great Advantage to the Publick, they have a Right as his Majesty's Great Council to give their Advice relating to that Application, where it hath been omitted or neglected by the Crown. But the allowing such a Right as this in the Commons doth not preclude his Majesty from previously signifying his Consent to any particular Application, nor make it improper for them to acknowlege that Consent, when it has been previously declared. If it should be allowed, that the Commons have a Right to advise, or even to bring in Heads of a Bill concerning a particular Application of Part of the publick Money lying in the Treasury, when they judge it necessary for the publick Good to do so, though there has been no previous Consent signified on the Part of the Crown, yet it will by no Means follow that when his Majesty hath previously signified his Consent, the Commons should reject a Bill merely because it contained

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an Acknowledgement of that Consent. Of this kind no Precedent is produced before that which happened in the last Session on *December 17th 1753*; and the Propriety of which is the very Point in Question.

This general Observation might be sufficient. But let us enter upon a more distinct Examination of the Precedents which are produced.

It is alledged in the Remarks, Numb. III. p. 11, 12. That "the House of Commons in 1749 proceeded as having been in long and quiet Possession of an undoubted Right to bring in Heads of a Bill for the Application of Money remaining in the Treasury at the Time of their Meeting." One would think according to this Representation of the Case, that it would be easy to produce many Precedents of Bills brought into the House of Commons appointing a particular Application of the unappropriated Money lying in the Treasury, without the King's having signified his previous Consent to that Application. For it is concerning such a particular Application to a certain Use or Service that the Question lies. And yet I do not find that before the Act passed in the Session of the Year 1749 there is any Instance produced of Heads of a Bill brought into Parliament in this Kingdom, expressly taking Notice of a Redundancy of Money lying unapplied in the Treasury, and then appointing the Application of it to a particular Use and Service, without the King's having previously signified his Consent. There is indeed a Precedent produced from the Proceedings of the Commons in the Reign of King *Charles II.* on which a great Stress has been laid. It relates to a Clause inserted in Favour of Sir *Henry Tichbourn* in the additional Act for better collecting the Hearth-money. The Commons, after mentioning his great Services and Sufferings, and particularly

ly his having been deprived of the Benefit of a Wardship which had been conferred upon him by King *Charles I.* declare, ^{to} That it was agreeable to " Honour and Justice, that an extraordinary Mark " of Favour should be placed upon him ; and that " in Satisfaction of his Services and Losses, he shall " receive 2000*l.* out of such Money as are or shall " be payable out of the Hearths." It is urged, that here is a manifest Appropriation made by the Commons out of Money that but three Years before had been granted to his Majesty in Perpetuity, and this without any Leave from his Majesty, or having obtained his previous Consent. But it is no hard Matter to shew, that this Instance is not to the Purpose. The Hearth-money was granted to the King in lieu of the Profits of the Court of Wards; but in the original Act by which the Hearth-money was granted to His Majesty, the Crown was expressly precluded from charging it with Gift, Grant or Pension. If therefore any Grant was to be made to Sir *Henry Tichbourn* out of that Money, as it was very proper there should, in Satisfaction for his great Services, and for the Loss of a Wardship that had been conferred upon him, the Grant must necessarily have its Rise originally among the Commons, and not from the Crown, which in that Case had no Power to make such a Grant till enabled by an Act of the whole Legislature to do so; and therefore could not with any Propriety have previously declared a Consent to it. For this would have supposed an antecedent Right in the Crown to make such a Grant, which in that particular Case the Crown had not. This Instance will therefore prove, that in Cases where the Crown is debarr'd from giving previous Consent, the want of that Consent cannot hinder the Commons from making a particular Application of that Money. But it doth not prove, that

in Cases where his Majesty hath a Power to make an Application of the publick Money to any particular Service, even without the Advice of the Commons, it is not proper for him to signify his Consent previously to the Commons bringing in a Bill concerning that particular Application. Much less doth it prove, that if his Majesty hath in such a Case signified his previous Consent, the Commons ought to reject that Application, rather than acknowledge that Consent. And I am persuaded, that if in the Case here referred to, it had been in the Power of the Crown to make such a Grant, and the King had previously signified to the Commons, that he recommended it to them, and would consent to that Application in favour of Sir *Henry Tichbourn*, that House of Commons would not have scrupled acknowledging his Majesty's Goodness in this his previous Recommendation and Consent, and would have been far from rejecting the Act, merely because in the Preamble it contained such an Acknowledgment.

Several Precedents are produced with great Pomp to shew, that where there has been any Surplus in the Treasury, it is called in the Reports of the Committee of Accompts *a Ballance due to the Nation*, and is said to be *duly credited to the Public*, and to *remain in Credit to the Nation*. And that the Surplus is constantly brought forward together with the growing Revenue, and new Aids, and all are applied by the Commons to make up the Supply granted to the Crown. The two principal Writers in this Cause strenuously insist upon these Precedents, especially the Author of the *Proceeding of the Honourable House of Commons vindicated*, who carries it so far as to pronounce, that "One risen from the Dead could not convince Persons, who will shut their Eyes against such conclusive Evidence as this." p. 61.

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But here it may be observed, that these ingenious Writers seem to have carried it farther than they themselves intended. If the Precedents here produced by them were to the Purpose, they would prove that the Commons have not only a Right, but the sole Right, not only of raising the Money, and of appropriating Part of it when they raise it to special Uses, but of applying the unappropriated Surplus remaining in the Treasury. For they represent it as the constant Usage for the Commons themselves to apply the several Surpluses, which would be to leave his Majesty no distinct Power of Application at all ; and this is what these Gentlemen would not be thought to pretend, and would indeed be inconsistent with the present Constitution of this Kingdom. But the Truth is, they seem here to mistake the Point they should prove. When they talk of the Commons applying the Surplus, what they call *applying* it is not their appropriating it to any particular publick Service, concerning which the Question properly lies, but it is only their appointing in general that this Surplus, as well as the other publick Money, should be applied to the Uses of Government. It will be easily allowed, that the Money lying unappropriated in the Treasury is *publick Money*, and may be justly said to *remain in Credit to the Nation* ; but it doth not follow from this, that the particular Application of it is not vested in the Crown. The several Surpluses referred to, together with the other publick Money, were appointed to make part of the Supply for the Support of the Government, and therefore were according to the Constitution vested in the Crown for publick Uses. So that here is no Instance of the Commons appropriating the Surplus in the Treasury to a particular Use or publick Service, or of their bringing in Heads of a Bill in which they declare a Redundancy of a considerable

able Sum lying in the Treasury, and make a particular Application of it to a special Service. In this Case therefore there needed no previous Consent of his Majesty, nor indeed was there properly any Place for it. The Redundancy or Surplus, according to this account of the Matter, was not taken out of his Majesty's Hands, but the Trust still continued to be vested in him, and he had it in his Power to apply it to such Uses as to him seemed most fit for the publick Service, and the Support of the Government.

As to what is farther urged by the Author of the *Proceeding, &c. Vindicated*, concerning the Applications made by the Commons of the several Surpluses from the Year 1717 to the Year 1723 towards the reducing the National Debt, this has been obviated in the Answer that was made to him by the Author of the *Considerations*, who has shewn that those Surpluses were not applied to discharge any Part of the Loan, but were applied for reducing the Arrears which had grown on the Establishment: And that this Application was made by the Crown, as to a publick Service, under the General Trust. See *Answer to a Pamphlet intitled The Proceeding of the Honourable House of Commons vindicated*, p 23, 24, 25. There was no Act made, nor Heads of a Bill brought into the House for appropriating those Surpluses, and therefore this cannot properly come up to the Point in Question. It was not till the Year 1749 that there was a Bill brought into the House of Commons declaring a considerable Balance remaining in the Treasury unapplied, and enacting the Application of Part of it towards discharging Part of the National Debt.

The only Time in which there was a large Redundancy of Money in the Treasury before the Year 1749 was in the Year 1709, when the Committee of

of Accompts, who delivered in their Report in *May*, reported that there would remain in Credit to the Nation at *Midsummer* that Year, over and above all Charges of Government seventy one thousand nineteen Pounds. It is therefore worth our while to inquire how the Commons acted on that Occasion, and whether they appropriated that Balance to any particular public Services. So indeed the Gentlemen that are against the Clause would have us believe. And it is of Importance to their Cause that it should be so. The Author of the *Proceeding, &c. vindicated*, takes Notice of several Things proposed by the Lord Lieutenant in his Speech from the Throne to the Consideration of the Commons ; and then though it doth not appear that the Lord Lieutenant at that Time knew that there was a large Balance remaining in the Treasury, our Author asks, “ Could “ the Ingenuity of Man devise a more effectu-“ al Method to dispose of a Redundancy ? ” p. 63. And it will be acknowledged, that if there had been Heads of a Bill then brought into the House declaring that Redundancy, and appropriating the Whole, or any Part of it, to such particular Uses and Services, without any previous Consent from the Crown, this might have furnished a Precedent to their Purpose. But no such Thing appears. It may be gathered from the Journals of the House, that this Redundancy, together with the additional Duties, made up the Supply, and therefore was left in Trust with the Crown for the Uses of the Government, but no Part of it was separately appropriated by the House of Commons to any particular Use or public Service. There was indeed a Vote of the House for buying Arms, Ammunition, and other Warlike Stores for the Militia of the Kingdom, and for building and providing Arsenals in the several Provinces of the Kingdom to lodge and secure the said

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Arms and Ammunition, and other warlike Stores. But this was not voted to be particularly done out of the Redundancy, of which there is no Mention made on this Occasion ; but it was resolved that a Supply be granted to her Majesty for such Purposes. See Journals of the House of Commons, Vol 3. p. 597, though it appears that little was then done towards the Execution of this Scheme. It is true, that the Writer of a Letter in *the Universal Advertiser* of Feb. 21. *Extraordinary*, confidently affirms, " that in the Year, 1709, the Balance in the Treasury of Seventy One Thousand and Nineteen Pounds, " was of their own mere Motion voted by the House " of Commons for the Uses of the Arsenal, and " College-Library, and Support of the Palatines." Any one that reads this, and will take this Gentleman's Word for it, would be apt to think, that the Commons in their Votes took express Notice of the Balance in the Treasury, and then voted that that Balance should be appropriated to the Uses he mentions. But this is not fair dealing. As to the Arsenal, Mention is made in the Act for the additional Duties of the enabling her Majesty to build an Arsenal near the City of *Dublin*, but neither any Part of those Duties, nor of the Balance, was appropriated to that Purpose. But her Majesty was at Liberty to act therein, as she thought fit for the public Service. It appears from the Report of the Committee of Accompts in 1711, that the Queen ordered by her Royal Letter, dated April 26, 1710, the Sum of 31850*l.* for building an Arsenal near the City of *Dublin*, according to an Estimate laid before her Majesty ; and also ordered, that this should be paid out of the Money arising from the additional Duties granted by the Paliament in the Session of 1709. So that it was her Majesty that by her Royal Letter appropriated that large Sum for building

building an Arsenal. And it is also observed by the Committee, that after having expended 4000*l.* towards building an Arsenal, her Majesty judged it too expensive to proceed in it, and designed an Armoury to be built in the Castle of *Dublin*, sufficient to contain 25000 Firelocks, with a proportionable Quantity of Arms, *ib.* Vol. 3. p. 847, 860. The Reader cannot but observe by these Instances how much these Things were left in the discretionary Power of the Crown. As to the College-Library, there was a Motion made, that the House would become Suitors to her Majesty, to extend her Royal Bounty to the Provost, Fellows, and Scholars of Trinity-College near *Dublin*, to enable them to erect a public Library. And accordingly an Address was presented to the Lord Lieutenant, to lay before her Majesty the humble Desire of the House for that Purpose. And afterwards in the Session of 1711, the Commons take Notice in their Address to her Majesty, that her Royal Bounty to the College of *Dublin*, was not only an Instance of her Regard to the Address of this House, but of her *princely Favour* to Learning and religious Education, *ibid.* p. 616, 827. In like Manner with Regard to the Palatines, the Commons did not bring in Heads of a Bill, but addressed her Majesty to order 5000*l.* a Year, for three Years to be issued out of her Treasury of this Kingdom, towards the Support and Settlement of those Protestant and Palatine Families. Nor did they in this, any more than in the former Instances, make any mention of the Balance as the particular Fund for that Service; but on the contrary assured her Majesty, that what should be laid out at their Desire, they will chearfully make good in Aids that shall be granted the next Session of Parliament, *ibid.* p. 688.

I think

I think then it may safely be affirmed, that after all their shew of Precedents, there is really none that is properly to their Purpose, till that in the Session of 1749. In that Part of the Act then made, which relates to the Payment of the national Debt, they take express Notice of a considerable Balance remaining in the Treasury unapplied, and then proceed to a particular Application of Part of that Money to the discharging Part of the national Debt. It is urged, that this was done without his Majesty's having signified his previous Consent to that Application. A great Stress is laid upon this, by all the Gentlemen that have written against the Clause; and yet it does not seem to be a proper Precedent to justify the rejecting it. For according to their own Representation of the Case, all that it is a Precedent for, or will prove, is, that where there hath been no previous Consent publicly signified on the Part of the Crown, the House of Commons may without any Reference to such Consent bring in Heads of a Bill relating to an Application of the public Money, which they know to be of great Importance to the Nation. But this will not prove, either that it would have been improper for the King previously to have declared his Consent to that Application, or that if he had done so, the Commons ought not to have made an Acknowledgement of that Consent.

But it will be proper to consider this Precedent more distinctly. The Commons in that Act of 1749. after having observed to his Majesty, that a considerable Balance remained in the Treasury *unapplied*, go on to declare, " And it will be for " your Majesty's Service, and for the Ease of your " faithful Subjects of this Kingdom, that so much " thereof as can be conveniently spared, should be " paid agreeably to your Majesty's most gracious Intentions,

“ tions, in Discharge of Part of the said Debt, &c.” Here there is a plain Reference to his Majesty’s *most gracious Intentions* concerning paying off Part of the national Debt, as having been some way or other known to the Commons, previously to their forming a Bill for that Purpose. It is asserted as a certain Fact, that when it appeared at the opening of the Session in *October 1749*, that there was such a Redundancy of Money in the Treasury, some of his Majesty’s Servants, Members of the House of Commons, applied to the Earl of *Harrington*, then Lord Lieutenant, to know what would be agreeable to his Majesty’s Intentions ; and that his Excellency having had no Instructions relative to that Matter, declared he would write into *England* to know the King’s Pleasure, and in the mean Time, as he was well assured of his Majesty’s Consent, he had not any Objection to the Commons proceeding in the ordinary Course : And that his Excellency having accordingly had Intimation given him, that his Majesty consented thereunto, provided Care were taken in drawing the Bill to have Words inserted for maintaining his Prerogative, communicated the same to some of his Majesty’s principal Servants, Members of the House of Commons ; in Consequence whereof the Words *agreeably to your Majesty’s most gracious Intentions* were inserted ; and that without some such Expressions that Bill would not have passed into a Law. See *The Answer to Part of a Pamphlet, intitled, the Proceeding, &c. Vindicated*, p. 7, 8. If this Matter of Fact be rightly represented, and it is publicly averred to be true, it quite destroys the Force of that Precedent, and the Use some would make of it. Since upon this View of the Case it appears, that his Majesty’s Consent, was previously made known, and that

the above-mentioned Words were inserted as referring to that Consent, and designed for a Saving of his Majesty's Prerogative. But however that be, it is manifest, that the Commons judged it proper and becoming the Regard due to his Majesty's Dignity and Prerogative, in bringing in Heads of a Bill relating to an Application of this Nature, to take Notice that what they did was agreeable to his Majesty's *most gracious Intentions*, of which they had sufficient Reason to be assured. And if they thought it a proper Instance of Respect to the Crown to mention this, though no such *Intentions*, had been publicly and expressly signified from the Throne, one would have expected, that the same Regard to his Majesty's Dignity and Prerogative would have ingaged them, when it was expressly signified from the Throne that he would consent, to acknowledge that Consent.

To the *Irish* Precedents already mentioned, may be added two *English* Precedents, which the Author of the *Proceeding of the Honourable House of Commons, Vindicated*, seems to think are of great Force. The first is the Act of Resumption of *Irish* Grants, in the Reign of King *William*, *which passed*, as he observes, not *only without his previous Consent, but against his known Inclination*. But this is generally now acknowledged to have been carried to an unjustifiable Extreme, under the Leading of Persons who had no great Good Will to that glorious Monarch, and took extraordinary Methods to compel him to assent. The bad Effects arising to this Kingdom from the Management of the Trustees acting under the Resumption Law were severely felt here, and more than once strongly represented by our House of Commons. And our Author himself owns, "that they set up an Inquisition in this Country,

“ try, suspended all Laws but their own, and acted like the *Roman Decemviri* in their corrupt State.” p. 88. It was not therefore prudently done to mention this Precedent. Nor if the *English* House of Commons had been perfectly right in all they did in this Matter, do I see how it is applicable to the Case before us. Doth it follow, that because the Parliament can resume exorbitant Grants, and thus controul the King’s known Prerogative in a Case where the good of the Nation requires it; for this was the Pretence: that therefore with Regard to an Application of the public Money confessedly of great Utility and Importance, it was rightly done to reject a Bill enacting that Application, merely because it contained an Acknowledgment of the King’s having previously declared that he would consent to it?

The other Precedent he mentions, is the Act for giving all *Captures made at Sea to British Sailors*, and which was passed in the *British* Parliament in 1739, without waiting for the King’s previous Consent, though insisted on by the Servants of the Crown, it being a Matter in which the Prerogative was concerned. He seems to think this to be a Case in point. But how little this is to the Purpose will appear if it be considered, that this does not relate at all to the Application of Money actually in the Receipt of his Majesty’s Treasury, but of Money that was yet to be taken from the Enemy: And that the giving these Captures to the Sailors was insisted on as the Condition of a large Sum to be raised by the Commons, and granted to the Crown. It was acknowledged on all Hands, that the Captures properly belonged to the King by his known Prerogative, but that it was necessary that in this Instance the Prerogative

should be waved and controuled, when the Good of the Nation and the Encouragement of the *British* Sailors in time of War, required it. This is not therefore applicable to the Case we are now considering, except it be allowed that in rejecting the Clause there was an Intention of controuling the King's acknowledged Prerogative, which has not been, and I presume will not be alleged in this Case: Nor can it be pretended that there was any Necessity on account of the public Good for doing so, as in the Case here referred to.

But with regard to the general Course of proceeding in the *British* House of Commons, it is well observed by the Author of the Considerations, that when the Rights of the Crown are supposed to be affected, his Majesty's Consent is wont to be signified in one way or other, previous to the Parliament's making an Act; and this Consent is usually signified in the House of Commons of *Great Britain*, by some of his Servants empowered by him to give such Consent. See *Considerations, &c.* p. 35, 36. It is indeed a happy thing, when both the Crown and Parliament, in order to the maintaining a proper good Temper and Harmony, manifest a mutual Condescension, and a regard to each other's respective Rights.

Of this mutual Regard there have been many Instances in the Proceedings of the Parliament of this Kingdom. In the Reign of Queen *Anne* in 1709, when the Commons had Reason to apprehend, that her Majesty was sollicited to reverse Outlawries of Persons, who had been attainted of High Treason for the Rebellions in 1641, and 1688, they presented an Address to the Queen in which they express themselves thus, " Every Bill of Parliament for reversing any Outlawries for

" High-

" High-Treason is an Act of your Majesty's Royal Grace, and cannot be brought into Parliament but by your Majesty's Direction and Allowance," and then they go on to declare, that " it would be extremely difficult, if not impossible, for any Her Majesty's Subjects to prevail with themselves to oppose a Bill of Grace recommended to them by the best of Queens": They therefore pray that *the Outlawries which are now in Force may so remain.* To this Address Her Majesty gave a gracious Answer, for which they returned their unfeigned Thanks. See Journals, &c. Vol. III. p. 644. 673. In a Speech from the Throne *August 27. 1717.* the Lord Lieutenant declares, that " His Majesty thought fit in Consideration of the Augmentation of the National Debt, occasioned by the late Disturbances, to lessen the Civil List on the Head of Pensions". This is here represented as a voluntary Act of Condescension in His Majesty, and as so far relaxing from the Strictness of his Prerogative. And accordingly for this the Commons in their Address *beg Leave to return to His Majesty their humble Thanks.* Vol. IV. p. 296. 301. In the Year 1715 the House of Commons resolved upon an Address to His Majesty, for an immediate Supply of Arms and Ammunition for the Use of the Militia, and Security of the Kingdom. When this Address was presented to the Lords Justices to be by them transmitted to *England*, they acquainted the Commons, that before this the King had given Orders for sending over Ten thousand Muskets with a convenient Quantity of Powder and Ball, and that they were glad that the House of Commons concurred in a Desire so agreeable to His Majesty's

Majesty's most gracious Intentions. And the Commons in an Address to the Lords Justices by way of Answer express their thankful Acknowledgements of it, and take Notice of *the good Intentions of so gracious a King*, *ibid.* p. 68. 72, 73.

Indeed any one that consults the Journals of the House of Commons of this Kingdom, will find generally great Care taken to preserve a due Respect to the Dignity and Prerogatives of the Crown. Hence it is that there are such Numbers of Instances of their addressing the Crown with Regard to particular Applications of the public Money; some of which Addresses relate to Applications of a public, others to those of a more private Nature. It were easy to fill many Pages with Instances to this Purpose. Such a manner of addressing in these Cases preserves a just Respect to the Royal Dignity and Prerogatives, and amounts to an Acknowledgement, that the Right of applying that Money to such Grants and Uses is by the Constitution ordinarily vested in His Majesty. And if it be proper for the Commons to address the King, as hath been often done, to apply the Money to certain Uses, then if His Majesty should in any such Cases see fit at any time previously to recommend such particular Applications to Parliament, and to signify that he would consent that the Money should be so applied, and the Commons should make an Acknowledgement of this his previous Consent, I cannot see how this could be reasonably found fault with.

I have not hitherto taken Notice of the Precedent in the Session of 1751. It is well known, that the Clause which was rejected by the Honourable House of Commons in the last Session on *December 17th*,

1753,

1753, had actually passed in the Session immediately preceding. And consequently the Commons in rejecting that Clause have acted directly contrary to the Precedent set by themselves two Years before. I am sensible that many will not bear to have that Precedent mentioned. It is urged, and a great Stress is laid upon it, that at the very Time when that Clause was passed, it was known to be against the general Sense of the House, but that for Reasons of Expediency it was suffered to pass. I shall not contest this Fact. But if that Clause had been then really regarded, as it is now by many represented, as a giving up our fundamental Liberties, no Reasons drawn from Expediency, would have been a sufficient Excuse for passing it. Or, if they thought the Necessity urgent, why was not a Resolution entred into the Journals of the House, that it shall not be drawn into Precedent ; of which there are several Instances to be met with in the Journals ? See particularly Vol. II. p. 127. 147. 587. 614.

Whatsoever the Views and Inclinations of the Commons were in passing it, yet since they really passed it, and since it had the Sanction of the whole Legislature, it has so far the Force of a Precedent and a Law ; and it's having been since rejected by a Majority of the House of Commons doth not nullify the Authority of it. For when a Declaration is made, or a Law passed by the whole Legislature, the King, Lords, and Commons, it is not in the Power of the House of Commons alone, or of any particular Branch of the Legislature apart from the rest, to vacate the Determination which was made by the whole.

But if there had been no Precedent at all for passing that Clause, and if it had been first proposed

posed in this last Session of Parliament I apprehend for the Reasons already given, that it would have been proper and agreeable to our Constitution to pass it. I believe no Man will pretend, that either King or Parliament are tied down not to use any Form or Expression but what was made use of before. It is sufficient if Care be taken that there be nothing in that Form or Expression, but what is just and proper to the Occasion, nothing that infringeth the King's just Prerogative, or the Privileges of Parliament, and Liberties of the People. And I hope it hath been shewn, that there is nothing in the Clause that is really inconsistent with any of these.

Upon the whole, I think it may be fairly concluded, that there was no just or sufficient Grounds for the loud Clamours that have been raised, as if an Attempt had been made on the Part of the Government to subvert the very Foundation of all our Liberties. The Gentlemen who opposed the Clause have been extolled as the Deliverers of their Country, and as having carried Patriotism to the noblest Height; whilst great Endeavours have been used to point out those on the other Side to publick Detestation and Abhorrence, as Persons that were ready for private Views to give up the essential Rights and Liberties of their Country. To encourage such a Spirit would certainly lead to general Confusion and Discord. And I am apt to think, that they who in the Heat of their Zeal have taken too much Pains to heighten and propagate popular Jealousies, would upon cooler Thoughts be far from intending or approving the Consequences, which such a Conduct hath a natural Tendency to produce. I doubt not, that many of the Gentlemen who rejected the Clause,

as

as well as Numbers of those who have espoused their Cause with so much Zeal, have been influenced in what they did by an honest, though I think mistaken, REGARD to what they apprehended the Rights and Liberties of their Country demanded from them. And to represent their Opposition as owing to Disaffection to his Majesty, would in my Opinion, be doing them great Injustice. But then on the other Hand, it is a very unjustifiable Conduct to cast injurious Reflections on those that took the contrary Side, or to endeavour to raise a popular Clamour against them. Since I think it appeareth from what hath been now offered, that Men of honest Minds might have good Reasons to support them in voting in Favour of the Clause. And I know no Reason why those should be thought to have acted in a manner unbecoming true Patriots, who being satisfied in their own Minds, that the Clause had nothing in it prejudicial to our Liberties, and being at the same Time apprehensive that the rejecting it might produce ill Consequences to the Kingdom, voted for passing it. And it may possibly be found in the Issue, that they acted the most prudent Part, and what was really most for the true Interest of their Country. It would undoubtedly give great Concern to all that wish well to the publick Happiness, if the indiscreet, though not ill intended Fervours of many among us, should give Occasion to his Majesty to entertain hard Thoughts of a People, of whose Loyalty and good Affection, he hath hitherto conceived the most favourable Opinion, and great Numbers of whom would, I am persuaded, at this very Instant, be ready to risk their Lives and Fortunes in his Defence.

H

There

There is no People upon Earth, but have some Grievances to complain of, and no Constitution that is absolutely perfect. We in this Kingdom are under some Disadvantages and Restraints. But if we compare them with the Advantages we enjoy, the latter will be found vastly superior to the former. We have been and are a happy People, if we be but sensible of our Happiness. And surely it becometh every true Friend and Lover of his Country, instead of fomenting Jealousies and Discontents, to endeavour to calm the Spirits of the People, and to engage them to set a due Value on the Advantages they enjoy, and to point to the best Methods of making a wise Improvement of them.

It is possible that some Persons may be displeased at this Attempt, that hath been made to rescue the Clause from the popular Odium which hath been cast upon it, and to shew that the Compliments made to those that were in the Opposition have been carried too far. But methinks it should be a Pleasure to every good Subject to find Reason to believe, that a Clause transmitted hither from his Majesty and his Council in *Great-Britain*, and in favour of which our Excellent King hath strongly declared himself, had no Tendency to make an Infringement on the essential Rights and Liberties of his People. I have freely and candidly declared my Sentiments concerning it, according to the most probable Judgment I have been capable of forming. I am sensible, that I may be easily mistaken, especially in Matters of this Nature, but can in Truth declare, that whether I be mistaken or not, I have honestly intended to shew my Regard to the Honour of the best of Kings, and to do real Service to my Country.

POSTSCRIPT.

SINCE this was sent to the Press, I have read a Pamphlet, intitled, *Moderation recommended to the Friends of Ireland*; and it gives me Pleasure to find that many of the Sentiments I have here advanced, are agreeable to those of the ingenious Gentleman who writ that Pamphlet.

FINIS.



(22)

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